TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted]1915

No. [redacted] 133

NORTHERN PACIFIC RAILWAY COMPANY, PETITIONER,

vs.

MARY A. MEESE ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR CERTIORARI FILED APRIL 18, 1914.
CERTIORARI AND RETURN FILED MAY 18, 1914.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 1025.

NORTHERN PACIFIC RAILWAY COMPANY, PETITIONER,

vs.

MARY A. MEESE ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 1, 1914.

No. 2287

United States

Circuit Court of Appeals

For the Ninth Circuit.

MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED MEESE, a Minor, CATHERINE MEESE, a Minor, LIZZIE MEESE, a Minor, WILLIE MEESE, a Minor, BENNIE MEESE, a Minor, by Their Guardian ad Litem, MARY A. MEESE,

Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

FILMER BROS. CO. PRINT 330 JACKSON ST., S. F., CAL.

INDEX OF PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

[Caption.]

Names and Addresses of Counsel.

GOVNOR TEATS, Esq., Attorney for Plaintiffs in Error,
510 Bernice Building, Tacoma, Washington.

LEO TEATS, Esq., Attorney for Plaintiffs in Error,
510 Bernice Building, Tacoma, Washington.

RALPH TEATS, Esq., Attorney for Plaintiffs in Error,
510 Bernice Building, Tacoma, Washington.

C. H. WINDERS, Esq., Attorney for Defendant in Error,
Lowman Building, Seattle, Washington.

[1*]

[Complaint.]

In the District Court of the United States for the Western District of Washington, Northern Division.

MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED MEESE, a Minor, CATHERIN MEESE, a Minor, LIZZIE MEESE, a Minor, WILLIE MEESE, a Minor, BENNIE MEESE, a Minor, by Their Guardian ad Litem, MARY A. MEESE,
Plaintiffs,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,
Defendant.

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*Page-number appearing at foot of page of original certified Record.

Plaintiffs herein complaining of the defendant company say:

I.

That on the 12th day of April, 1913, Benjamin Meese, deceased, received injuries through the carelessness and negligence of the defendant company and from said injuries the said Benjamin Meese died on the morning of the 17th day of April, 1913, in the city of Seattle, King County, Washington.

That the deceased, Benjamin Meese, left surviving him, his wife, plaintiff herein, Mary A. Meese; and also eight (8) children, also plaintiffs herein, to wit:

May Meese, of the age of twenty-two (22) years,
Edith Meese of the age of twenty (20) years,
Annie Meese of the age of eighteen (18) years,
Alfred Meese of the age of sixteen (16) years,
Catherin Meese of the age of thirteen (13) years,
Lizzie Meese of the age of twelve (12) years,
Willie Meese of the age of nine (9) years,
Bennie Meese of the age of six (6) years.

That all of said plaintiffs are citizens of the State of Washington, **[2]** residing in Seattle, King County, Washington.

That on the 29th day of May, 1913, Mary A. Meese was appointed by this Honorable Court guardian ad litem of the above-named minor children for the purpose of commencing and prosecuting their action against the Northern Pacific Railway Company, defendant herein, jointly with the surviving wife and other surviving children of Benjamin Meese.

That the Northern Pacific Railway Company is at this time, and was at all the times herein mentioned,

a corporation organized and existing under the laws of Wisconsin, owning and operating a railway system carrying freight for hire in the State of Washington and at the times and places hereinafter mentioned.

II.

On the 12th day of April, 1913, and for a long time prior thereto, Benjamin Meese, deceased, was in the employ of the Seattle Brewing & Malting Company, in its plant located at Georgetown in the city limits of the city of Seattle, King County, Washington; and as part of his duty under his employment with the said Brewing Company was to assist in loading beer upon the cars and also to place Government stamps upon the barrels half barrels, quarter barrels when filled with beer and before the same were loaded into the railroad cars spotted at the proper place at said Brewing plant for said loading. That at the plant, the said defendant had a railroad track running alongside of the wire house and buildings containing the finished products to be shipped by said Brewing Company, which said siding was connected with defendant company's switches, siding and main tracks; and the said defendant company furnished the said Brewing Company with cars on said track to be loaded with products of said plant to be **[3]** carried by said defendant company to their different points of destination. That after the said cars are placed upon said siding of said defendant company, the cars were spotted and moved by the Brewing Company to different places necessary for the loading on said siding, with appli-

ances furnished and operated by the said Brewing Company; and when the said cars were so placed upon the said siding and spotted at the proper places for loading the cars, said Brewing Company used skids and other appliances extending from the car into the wire house of the Brewing Company, for the purpose of rolling the kegs, barrels, quarter barrels or half barrels of the finished product of the Brewing Company from the plant into the car; and the said Brewing Company employed a crew of men called loaders for the purpose of loading said car with their said finished product and also with ice sometimes necessary in the shipment of the said finished product, and at the same time of loading the said car the said Brewing Company employed workmen to place the necessary Government stamps upon each of the receptacles of the said finished product, which was usually done while said receptacles were moving along the said skids; and the workmen who performed said work usually stood upon the floor or platform beneath the skids and which platform ran alongside of the building and plant of the Brewing Company and into the opening in the building or plant where the finished product was taken from the storehouse or plant. That while loading and filling the said car, the movement of the said car, especially without notice to the loading crew and the employee who placed the Government stamps upon the receptacles, was dangerous to the workmen of the Brewing Company, as the movement of the said car would cause the skids and receptacles of the finished product [4] to fall upon the employees of the

Brewing plant and injure them.

III.

That at the time of the accident herein complained of, the deceased husband and father was placing Government stamps upon the receptacles, half barrels of the finished products of the Brewing Company, in his regular course of employment with the Brewing Company, and located to the south of the skids and half barrels as they moved from the plant of the Brewing Company into the car.

IV.

That while the said deceased, Benjamin Meese, was so employed placing the Government stamps upon the half barrels and filling and loading a car upon said siding, on the 12th day of April, 1913, at about the hour of 6:10 o'clock of the evening of said day, the said defendant company, by and through its switchman, locomotive engineer and employees carelessly and negligently without warning to the deceased, Benjamin Meese, and without warning to any of the loading crew, then in the employ of the said Brewing Company loading the car upon the said siding, knowing that said men were at that time loading the car, caused a number of cars to come down the said siding alongside of the plant of the said Brewing Company with tremendous force and momentum, striking the car then being loaded with tremendous force and momentum, knocking the car along the track causing the skid then being used by loading crew to load the said car to fly backwards and against the deceased, causing large number of half barrels loaded with the finished product of the

Brewing Company upon the said skids to fall upon the deceased, maiming and injuring him so that from said injuries so received through the carelessness and negligence of the defendant company the said Benjamin Meese, deceased, **[5]** died on the morning of the 17th day of April, 1913, leaving his widow and children, parties plaintiff herein.

V.

That immediately after the accident and injury to Benjamin Meese, deceased, plaintiffs herein employed a surgeon and doctor for the purpose of treating and caring for the deceased, and that the said doctor and surgeon attended the deceased during the several days he lived, performed operations, and that the service so rendered are of the reasonable value of Two Hundred and Fifty ($250.00) Dollars. That the plaintiffs herein removed the deceased during his illness to the hospital and incurred a liability there of Forty and 53/100 ($40.53) Dollars. That the burial of the deceased caused the plaintiffs herein the sum of about Four Hundred and Twenty-five ($425.00) Dollars.

VI.

That at the time of the accident herein complained of the deceased Benjamin Meese, was fifty-two (52) years of age, an able-bodied, strong and healthy person, earning and able to earn about ninety ($90.00) dollars per month, living with and supporting his family, consisting of himself and the parties plaintiff herein. That he was a loved and loving husband and father, devoting his services, attention and care upon his family, educating his minor children, rear-

ing them in culture and giving them intellectual, moral and physical training as becomes a father. That the plaintiffs herein are damaged through the wrongful death of their husband and father, through the negligence and carelessness of the defendant company in the sum of Twenty-five Thousand Seven Hundred Fifteen and 53/100 ($25,715.53) Dollars.

Wherefore, plaintiffs pray judgment against the **[6]** defendant in the sum of Twenty-five Thousand Seven Hundred Fifteen and 53/100 ($25,715.53) Dollars, together with their costs and disbursements herein.

TEATS, TEATS & TEATS,
Attorneys for Plaintiff. **[7]**

[Verification.] **[8]**

[Caption.]

Demurrer.

Comes now the defendant Northern Pacific Railway Company, a corporation, and entering its appearance herein, demurs to the complaint of the plaintiffs, and for grounds of demurrer states:

I.

That the plaintiffs' complaint fails to state facts sufficient to constitute a cause of action against the defendant for the reason:

a. That there is no sufficient statement of facts set forth in said complaint to show that the accident referred to therein was the result of negligence or want of care on the part of the defendant.

b. That there is no authority in law under which the plaintiffs' action can be maintained as against

this answering defendant, it appearing from the complaint that Benjamin Meese, on account of whose wrongful death this action was brought, sustained the injuries of which complaint is made, at the place of work and plant of his employer, and that plaintiffs' claim comes within the terms of Chapter 74 of the Session Laws of the State of Washington for 1911, being an act relating to **[9]** compensation of injured workmen.

II.

That the Court has no jurisdiction of the subject matter of this action, the injuries to the plaintiffs' decedent having occurred while he was employed at the works and plant of his employer, and all rights of action by reason of the matters set forth in the plaintiffs' complaint have been withdrawn from the jurisdiction of the Court by Chapter 74 of the Session Laws of Washington for 1911 known as the Workmen's Compensation Act.

III.

That there is a defect of parties plaintiff.

C. H. WINDERS,
Attorney for Defendant.

[Verification.] **[10]**

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2489.

MARY A. MEESE et al.,

Plaintiffs,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendant.

Order Sustaining Demurrer and Judgment of Dismissal.

BE IT REMEMBERED that this cause came on duly and regularly for hearing before the Court on the 7th day of July, 1913, upon the demurrer of the defendant to the plaintiffs' complaint, plaintiffs appearing by their attorneys Messrs. Teats, Teats & Teats and the defendant by its attorney, C. H. Winders, and the matter being duly and regularly submitted to the Court by both parties and the Court having taken the cause under advisement and having thereafter filed herein his written opinion sustaining said demurrer, which said opinion was filed on July 10, 1913, and the defendant now moving for an order sustaining said demurrer it is by the Court ordered, adjudged and decreed that the defendant's demurrer to the plaintiffs' complaint be and the same is hereby sustained.

And the plaintiffs in open court, through their attorney, electing to stand upon their complaint with-

out amendment, it is now upon motion of the defendant ordered, adjudged and decreed that the plaintiffs take nothing by their alleged cause of action herein, and that this action be and the same is hereby dismissed, and that the defendant **[11]** do have and recover of and from the plaintiffs its costs and disbursements herein to be taxed, to all of which the plaintiffs except and an exception is allowed.

Done in open court this 11th day of July, 1913.

EDWARD E. CUSHMAN,
Judge.

[Indorsed]: Judgment of Dismissal. Filed in the U. S. District Court, Western Dist. of Washington, July 14, 1913, Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. **[12]**

[Caption.]

Assignment of Errors.

In the United States Circuit Court of Appeals for the Ninth Circuit:

Now comes the above plaintiffs in error by their attorneys Teats, Teats and Teats, and say that in the record and proceedings in the Court below in the above-entitled action therein, there is substantial error in this: First, that the Court erred in sustaining the demurrer of the defendant therein to the complaint of the plaintiffs therein, for the reason that said complaint states a complete cause of action against the defendant therein. Second, that the Court erred in rendering judgment therein in dismissing the plaintiffs' action therein, for the reason

that the said judgment was contrary to law.

TEATS, TEATS & TEATS,
Attorneys for Plaintiffs in Error.

[Acceptance of Service, etc.] **[13]**

[Caption.]

Petition for Writ of Error.

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Now comes Mary A. Meese, May Meese, Edith Meese, Anna Meese, Alfred Meese, a minor, Catherine Meese, a minor, Lizzie Meese, a minor, Willie Meese, a minor, Bennie Meese, a minor, by their guardian ad litem, Mary A. Meese, plaintiffs in error, and petitions this Honorable Court to allow a Writ of Error to be directed to the District Court of the United States for the District of Washington, Northern Division, to remove to this, the United States Circuit Court of Appeals for the Ninth Circuit for a review thereof, the record in the case lately pending in said court below, wherein above-named plaintiffs in error were plaintiffs and the above-named defendant in error was defendant, and particularly the record of the judgment rendered by said District Court in the said cause wherein the said Court below sustained the demurrer of the defendant to the complaint of the plaintiffs and dismissed the said plaintiffs said cause at their costs; said judgment was duly entered on record therein on the 11th day of July, 1913; that plaintiffs be allowed to perfect **[14]** this appeal on filing an appeal bond in the sum of two hundred dollars.

Your petitioners respectfully state that they have this day filed herewith their assignment of errors committed by the Court below in said cause, and intended to be urged by your petitioners and plaintiffs in error in the prosecution of this their suit in error.

Dated July 11, 1913.

TEATS, TEATS & TEATS,
Attorneys for Plaintiffs in Error.

[Acknowledgment of Service, etc.] **[15]**

[Caption.]

Order Allowing Writ of Error.

Upon a petition of the plaintiffs herein, they having filed their assignments of error, it is ordered that a writ of error be, and is hereby allowed, to have reviewed in the United States Circuit Court of Appeals Ninth Circuit, the judgment heretofore entered herein, upon the plaintiffs in error filing their cost bond in the sum of Two Hundred Dollars.

EDWARD E. CUSHMAN,
United States District Judge.

[Endorsed: Filed, etc.] **[16]**

[Caption.]

Appeal Bond.

KNOW ALL MEN BY THESE PRESENTS, That we, Mary A. Meese, May Meese, Edith Meese, Anna Meese, Alfred Meese, a minor, Catherine Meese, a minor, Lizzie Meese, a minor, Willie Meese, a minor, and Bennie Meese, a minor, by their Guardian ad litem, Mary A. Meese, as principals, and Fidelity and Deposit Company of Maryland, as Surety,

are held and firmly bound unto the Northern Pacific Railway Company, a corporation, defendant, above named, in the sum of Two Hundred ($200.00) Dollars, to be paid to the said Northern Pacific Railway Company or its assigns, which payment well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our successors, representatives, assigns, executors and administrators, firmly by these presents.

Sealed with our seals and dated this 15th day of July, 1913.

Whereas, the above-named plaintiffs have sued out a Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment in the above-entitled cause in the District Court of the United States for the Western **[17]** District of Washington, Northern Division, and

Now, therefore, the condition of this obligation is such, that if the above-named plaintiffs, Mary A. Meese, May Meese, Edith Meese, Anna Meese, Alfred Meese, a minor, Catherine Meese, a minor, Lizzie Meese, a minor, Willie Meese, a minor, Bennie Meese, a minor, by their guardian ad litem, Mary A. Meese, shall prosecute said Writ to effect and answer for all costs if it shall fail to make good its plea, then

this obligation shall be void; otherwise to remain in full force and effect.

MARY A. MEESE,
MAY MEESE,
EDITH MEESE and
ANNA MEESE,
ALFRED MEESE, a Minor,
CATHERINE MEESE, a Minor,
LIZZIE MEESE, a Minor,
WILLIE MEESE, a Minor,
BENNIE MEESE, a Minor,
By their Guardian ad Litem,
MARY A. MEESE.
By their Attorneys of Record.
TEATS, TEATS and TEATS,
Principals.
FIDELITY & DEPOSIT COMPANY, of Maryland.
By H. T. HANSEN,
Attorney in fact.

The above bond and sufficiency of the surety on the same are hereby approved this 16th day of July, 1913.

EDWARD E. CUSHMAN,
Presiding District Judge.

[Endorsed: Filed, etc.] **[18]**

[Opinion.]

[Caption.]

CUSHMAN, District Judge.

This suit was brought to recover for the death of the husband and father of the plaintiffs, alleged to

have been caused by the wrongful act of the defendant. Defendant demurs to the complaint upon several grounds, the only one argued being,

> "That there is no authority in law under which the plaintiffs' action can be maintained as against this answering defendant, it appearing from the complaint that Benjamin Meese, on account of whose wrongful death this action was brought, sustained the injuries of which complaint is made, at the place of work and plant of his employer, and that plaintiffs' claim comes within the terms of Chapter 74 of the Session Laws of the State of Washington for 1911, being an act relating to compensation of injured workmen."

The complaint alleges:

> "On the 12th day of April, 1913, and for a long time prior thereto, Benjamin Meese, deceased, was in the employ of the Seattle Brewing & Malting Company, in its plant located at Georgetown in the city limits of the City of Seattle, King County, Washington; and as part of his duty under his employment with the said Brewing Company, was to assist in loading beer upon the cars and also to place Government stamps upon the barrels, half barrels, quarter barrels when filled with beer and before the same were loaded into the railroad cars spotted at the proper place at said Brewing plant for said loading. **[19]** That at the plant, the said defendant had a railroad track running alongside of the wire house and buildings containing the

finished products to be shipped by said Brewing Company, which said siding was connected with defendant Company's switches, siding and main tracks; and the said defendant Company furnished the said Brewing Company with cars on said track to be loaded with products of said plant to be carried by said defendant Company to their different points of destination. That after the said cars are placed upon said siding of said defendant Company, the cars were spotted and moved by the Brewing Company to different places necessary for the loading on said siding, with appliances furnished and operated by the said Brewing Company; and when the said cars were so placed upon the said siding and spotted at the proper places for loading the cars, said Brewing Company used skids and other appliances extending from the car into the wire house of the Brewing Company, for the purpose of rolling the kegs, barrels, quarter barrels or half barrels of the finished product of the Brewing Company from the plant into the car; and the said Brewing Company employed a crew of men called loaders for the purpose of loading said car with their said finished product and also with ice sometimes necessary in the shipment of the said finished product and at the same time of loading the said car, the said Brewing Company employed workmen to place the necessary Government stamps upon each of the receptacles of the said finished product, which was usually done while said receptacles were

moving along the said skids; and the workmen who performed said work usually stood upon the floor or platform beneath the skids and which platform ran alongside of the building and plant of the Brewing Company and into the opening in the building or plant where the finished product was taken from the storehouse or plant. That while loading and filling the said car, the movement of the said car, especially without notice to the loading crew and the employee who placed the Government stamps upon the receptacles, was dangerous to the workmen of the Brewing Company, as the movement of the said car would cause the skids and receptacles of the finished product to fall upon the employees of the Brewing plant and injure them.

"That at the time of the accident herein complained of, the deceased husband and father, was placing Government stamps upon the receptacles, half barrels of the finished products of the Brewing Company, in his regular course of employment, with the Brewing Company and located to the south of the skids and half barrels as they moved from the plant of the Brewing Company into the car.

"That while the said deceased, Benjamin Meese, was so employed, placing Government stamps upon the half barrels and filling and loading a car upon said siding, on the 12th day of April, 1913, at about the hour of 6:10 o'clock of the evening of said day, the said defendant

Company by and through its switch-man, locomotive engineer and employees, carelessly and negligently without warning to the deceased, Benjamin Meese, and without warning to any of the loading crew, then in the employ of the said Brewing Company, loading the car upon the said siding, knowing that said men were at that time loading the car, caused a number of cars to come down the said siding alongside of the plant of the said Brewing Company with tremendous force and momentum, striking the car then being loaded, with tremendous force and momentum, knocking the car along the track, causing the skid then being used by loading crew to load the said car to fly backwards and against the deceased, causing large number of half barrels loaded with the finished product of the Brewing Company upon the said skids to fall upon the deceased maiming and injuring him so that from said injuries so received through the carelessness and negligence of the defendant Company, the said Benjamin Meese, [20] deceased, died on the morning of the 17th day of April, 1913, leaving his widow and children, parties plaintiff herein."

TEATS, TEATS & TEATS, for Plaintiffs.
C. H. WINDERS, for Defendant.

The Workmen's Compensation Law (Washington Session Laws 1911, p. 345), provides:

"* * * * The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises

are withdrawn from private controversy, and sure and certain relief for workmen, injured in extrahazardous work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this act provided. (Sec. 1, pp. 345 and 346.) * * *

"Workman means every person in this state, who, after September 30, 1911, is engaged in the employment of an employer carrying on or conducting any of the industries scheduled or classified in section 4, whether by way of manual labor or otherwise, and whether upon the premises or at the plant, or, he being in the course of his employment, away from the plant of his employer: 'PROVIDED, HOWEVER, That if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children, or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section; and if he take under this act, the cause of action against such other shall be assigned to the state for the benefit of

the accident fund; if the other choice is made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case. Any such cause of action assigned to the state may be prosecuted, or compromised by the department, in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department. (Sec. 3, pp. 347 and 348.) * * *

"Each workman who shall be injured whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever." (Sec. 5, p. 356.)

No question is made but that the employment of the deceased was of an extrahazardous character and within those employments provided for in the act. The question presented **[21]** is purely one of statutory construction.

Upon the argument much was said concerning the constitutionality of a legislative act compelling contribution from one person, or employer, to be used in

paying for the negligence of another. This phase of the act is not now before the Court. That is a defense only to be made by those obliged to contribute to, or those charged with the duty of administering the funds contributed. The question of legislative power may, in this case, only be considered as, possibly, one of the guides to be resorted to in determining the legislative intent manifested by the law as written.

There is no right of action at common law to recover for death occasioned by the wrongful act of another.

13 Cyc. 310.

It is a right solely given by statute. A right such as this which the legislature gives, it may, of course, take away. The sole question, therefore, is: What was the legislative intent concerning this matter? Was it to end all suits at law for the injury or death of employees while engaged in certain occupations, no matter by whom injured or killed? Or, was it only to end such controversies between employer and employee?

Parts of the act, taken alone, would justify either conclusion. The title provides:

> "An Act relating to the compensation of injured workmen in our industries."

This shows a broad purpose—broad enough to include all injuries caused by any one to such "workman in our industries."

Section 1 announces:

> "The common law system governing the remedy of workmen against employers for injuries

received in hazardous work is inconsistent with modern industrial conditions."

This shows a narrower view; but, as shown by the parts of the act quoted above, it does not stand alone. Section III of the act, above quoted, provides that, when the deceased workman is **[22]** killed "away from the plant of his employer," through the negligence of another "not in the same employ," his wife or children may elect whether to take, under the act, the industrial insurance therein provided for, or seek to recover from such other—that is, recover in an ordinary law action for such other's negligence.

In this case, the complaint shows that the deceased was—giving the ordinary meaning to the words—killed, not "away from," but at the plant of his employer. Sections III and V, in classifying the injuries by the place where they occur, both contain the expression, "whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer." "At the plant" may include less or more than "on the premises," depending on the relative extent of the two; but these two expressions show an intention not to limit the application of the law to real property boundaries.

The proviso, expressly preserving the right of action at law for the death of an employee, resulting from an injury "occurring away from the plant of the employer" clearly shows an intent to except from that provision of the act, abolishing all private controversies and all rights of civil action, what, but for such provision, would have been abolished, and,

as the right of civil action is alone preserved when the injury occurs "away from the plant of the employer," then it is not preserved, but is abolished when it occurs at the plant of the employer.

This intent is further manifested by Section V of the act providing for the payment of industrial insurance from the fund created by the act, which "shall be in lieu of any and all rights of action whatsoever against any person whomsoever," "Except as in this act otherwise provided."

The only relevant exception is, without doubt, the one referred to in the provision of the act providing:

> "That if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another **[23]** not in the same employ, the injured workman, or if death result from the injury, his widow, children or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section; and if he take under this act, the cause of action against such other shall be assigned to the state for the benefit of the accident fund; if the other choice is made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case." (p. 348.)

Courts have often had occasion to point out that the intent may frequently more satisfactorily be

shown by the nature of an exception than in any other way. This seems to be such a case.

Demurrer sustained.

Filed July 10, 1913. **[24]**

Writ of Error [Copy].

UNITED STATES OF AMERICA.

The President of the United States of America to the Honorable, the Judge of the District Court of the United States for the Western District of Washington, Northern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of dismissal which is in the said District Court before you, or some of you between Mary A. Meese, May Meese, Edith Meese, Anna Meese, Alfred Meese, a minor, Catherine Meese, a minor, Lizzie Meese, a minor, Willie Meese, a minor, Bennie Meese, a minor, by their guardian ad litem, Mary A. Meese, plaintiffs in error, and Northern Pacific Railway Company, a corporation, defendant in error, a manifest error hath happened to the damage of the said plaintiffs in error, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this Writ, so that you have

the same at San Francisco, in said Circuit, on the 13th day of August, 1913; and that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, which of right and according to law and custom of the United States ought to be done.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 14th day of July, 1913.

[Seal] FRANK L. CROSBY,

Clerk of the District Court of the United States District Court, for the Western District of Washington. **[25]**

Allowed by

[Seal] EDWARD E. CUSHMAN,

District Judge of the United States, Presiding in the District Court of the United States, for the Western District of Washington, Northern Division.

[Admission of Service, etc.]

Filed July 16, 1913. **[26]**

[Caption.]

Citation [Copy].

UNITED STATES OF AMERICA.

The President of the United States of America to Northern Pacific Railway Company, a Corporation, Greeting:

You are cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the courtroom of said Court, in the city of San Francisco, in the State of California,

within thirty (30) days after the date of this Citation, pursuant to Writ of Error filed in the Clerk's office of the District Court of the United States, for the Western District of Washington, Northern Division, wherein Mary A. Meese, May Meese, Edith Meese, Anna Meese, Alfred Meese, a minor, Catherine Meese, a minor, Lizzie Meese, a minor, Willie Meese, a minor, Bennie Meese, a minor, by their guardian ad litem, Mary A. Meese, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said Writ of Error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf. **[27]**

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, the 14th day of July, 1913.

[Seal] EDWARD E. CUSHMAN,
Judge of the District Court of the United States.

[Admission of Service, etc.]

Filed July 14, 1913. **[28]**

[Caption.]

Praecipe.

To the Clerk:

Please make and prepare the record for the Circuit Court of Appeals in the above-entitled action, to wit: Complaint, Demurrer, Order Sustaining Demurrer and Judgment Dismissing Case, Assignment of Error, Petition for Writ of Error, Order Allowing Writ of Error, Appeal Bond, Opinion of Court.

TEATS, TEATS and TEATS.

[Endorsedment of filing, etc.] **[29]**

[Caption.]

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court, for the Western District of Washington, do hereby certify the foregoing 29 typewritten pages numbered from 1 to 29, inclusive, to be a true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as are necessary to the hearing of said cause on Writ of Error therein in the United States Circuit Court of Appeals for the Ninth Circuit, and as is stipulated for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on return to said Writ of Error herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the foregoing to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the plaintiffs in error for the preparation and certification of the typewritten transcript of record issued to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's Fee (Sec. 828 R. S. U. S. as Amended by Sec. 6 Act of March 2, 1905) for making transcript of the record for printing purposes, 84 folios at 20c per folio.....	$16.80
Certificate to certified copy of type-written transcript of record.....	.30
Seal to said certificate.....	.40
	$17.50

I hereby certify that the above cost for preparing and certifying record amounting to $17.50 has been paid to me by Messrs. Teats, Teats & Teats, attorneys for plaintiffs in error.

I further certify that I hereto attach and herewith transmit the original Writ of Error and original Citation issued in this cause.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 17th day of July, 1913.

[Seal] FRANK L. CROSBY,
Clerk.

Writ of Error [Original].

UNITED STATES OF AMERICA.

The President of the United States of America, to the Honorable, the Judge of the District Court of the United States for the Western District of Washington, Northern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of dismissal which is in the said District Court before you, or some of you

between Mary A. Meese, May Meese, Edith Meese, Anna Meese, Alfred Meese, a minor, Catherine Meese, a minor, Lizzie Meese, a minor, Willie Meese, a minor, Bennie Meese, a minor, by their guardian ad litem, Mary A. Meese, Plaintiffs in Error, and Northern Pacific Railway Company, a corporation, Defendant in Error, a manifest error hath happened to the damage of the said Plaintiffs in Error, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit, together with this Writ, so that you have the same at San Francisco, in said Circuit, on the 13th day of August, 1913; and that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, which of right and according to law and custom of the United States ought to be done.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court

of the United States, this 14th day of July, 1913.

[Seal] FRANK L. CROSBY,

Clerk of the District Court of the United States District Court, for the Western District of Washington.

Allowed by

[Seal] EDWARD E. CUSHMAN,

District Judge of the United States, Presiding in the District Court of the United States, for the Western District of Washington, Northern Division.

[Admission of Service, etc.]

[Caption.]

Citation [Original].

UNITED STATES OF AMERICA.

The President of the United States of America to Northern Pacific Railway Company, a Corporation, Greeting:

You are cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the courtroom of said court, in the city of San Francisco, in the State of California, within thirty (30) days after the date of this Citation, pursuant to Writ of Error filed in the Clerk's office of the District Court of the United States, for the Western District of Washington, Northern Division, wherein Mary A. Meese, May Meese, Edith Meese, Anna Meese, Alfred Meese, a minor, Catherine Meese, a minor, Lizzie Meese, a minor, Willie Meese, a minor, Bennie Meese, a minor, by their

guardian ad litem, Mary A. Meese, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said Writ of Error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, the 14th day of July, 1913.

[Seal] EDWARD E. CUSHMAN,
Judge of the District Court of the United States.

[Admission of Service, etc.]

[Stipulation Under Rule 23 as to Printing Record.]

[Title of Cause.]

In printing the record the Clerk shall eliminate all captions and verifications, excepting the caption of the complaint, and in lieu thereof print the words: "Caption" and "Verification"; also all file marks, admissions and proof of service.

TEATS, TEATS & TEATS,
Attorneys for Plaintiff in Error.
C. H. WINDERS,
Attorney for Defendant in Error.

[Endorsed]: No. 2287. In the United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 21, 1913. F. D. Monckton, Clerk.

[Endorsed]: No. 2287. United States Circuit Court of Appeals for the Ninth Circuit. Mary A. Meese, May Meese, Edith Meese, Anna Meese, Alfred Meese, a Minor, Catherine Meese, a Minor, Lizzie Meese, a Minor, Willie Meese, a Minor, Bennie Meese, a Minor, by Their Guardian ad Litem, Mary A. Meese, Plaintiffs in Error, vs. Northern Pacific Railway Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed July 21, 1913.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

No. 2287

United States
Circuit Court of Appeals
For the Ninth Circuit.

MARY A. MEESE et al.,

Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendant in Error.

Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the September term A. D. 1913, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the City of Seattle, in the State of Washington, on Monday, the eighth day of September, in the year of our Lord one thousand nine hundred thirteen: Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge.

No. 2287.

MARY A. MEESE et al.,

Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendant in Error.

Order of Submission.

By consent of counsel for the respective parties thereto, ORDERED, above-entitled cause submitted to the Court for consideration and decision, on briefs, without oral argument.

At a stated term, to wit, the October Term A. D. 1913, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday the sixteenth day of February, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge.

No. 2287.

MARY A. MEESE et al.,

Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendant in Error.

Order Directing Filing of Opinion and Filing and Recording of Judgment.

ORDERED, that the opinion this day rendered by this Court in the above-entitled cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of the Court in accordance with said opinion.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2287.

MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED MEESE, a Minor, CATHARINE MEESE, a Minor, LIZZIE MEESE, a Minor, WILLIE MEESE, a Minor, BENNIE MEESE, a Minor, by Their Guardian ad Litem, MARY A. MEESE,

Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendant in Error.

Opinion, U. S. Circuit Court of Appeals.

WRIT OF ERROR TO THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, SOUTHERN DIVISION.

Action at law by the plaintiffs, as the wife and children of Benjamin Meese, deceased, to recover damages for the wrongful death of said decedent.

The plaintiffs, the wife and children of Benjamin Meese, deceased, citizens of the State of Washington, filed their complaint in the court below against the defendant, Northern Pacific Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, to recover from said defendant the sum of $25,715.53 as

damages sustained by them by reason of the death of their said husband and father.

It appeared from the complaint that the defendant maintained a track or switch connecting with its main tracks, by means of which freight-cars were furnished to the Seattle Brewing and Malting Company for the loading of the finished product of its plant situate in the City of Seattle, Washington; that said switch ran alongside of and parallel with a house or building of the brewing company known as the wire-house, in which was stored the finished product of the plant to be loaded into cars for shipment to various parts of the country; that the cars left on said track or switch by the defendant were loaded with the barrels containing the finished product of the brewing company by means of skids and other appliances extending from the wire-house into the car, said barrels being rolled from said wire-house along and over the skids into the car.

It further appeared from said complaint that on the 12th day of April, 1913, the decedent, Benjamin Meese, was in the employ of said brewing company at its said plant in the City of Seattle, Washington; that his duties, among others, as such employee, consisted in placing Government stamps upon the barrels containing the finished product of the brewing company, and, also, in assisting in loading said barrels from the wire-house of the brewing company into the cars supplied by the defendant on its said track or switch, for that purpose; that at the time the decedent received the injuries from which he afterwards died, he was engaged, pursuant to his duties as an

employee of said brewing company, in placing Government stamps upon the barrels containing the finished product of said brewing company, as they were being rolled along one of the skids above referred to from the wire-house of the brewing company into the car of the defendant standing on said track or switch; that for this purpose he was standing on a platform which ran below said skid and along the side of and parallel with said wire-house, and between said wire-house and the track or switch of the defendant, such position being the position from which said work and duty was usually carried on and performed by employees of the brewing company when engaged in placing Government stamps upon its finished product; that while the decedent was so employed, the defendant by and through its agents and employees carelessly and negligently and without warning to the deceased, caused a number of cars to come down its siding or switch with tremendous force and momentum, striking the car then being loaded with the finished product of the brewing company, causing the skid then being used for that purpose to fly back against the decedent, whereby a large number of barrels containing said finished product then being moved and rolled along said skid fell upon said decedent causing the injuries from which he afterwards died.

To the complaint the defendant interposed a demurrer on the ground that the same failed to state facts sufficient to constitute a cause of action against it; that there was no authority in law under which the plaintiffs' action could be maintained as against

the defendant for the reason that it appeared from the complaint that Benjamin Meese, on account of whose wrongful death the action was brought, sustained the injuries of which complaint was made at the place of work and the plant of his employer, and that plaintiffs' claim came within the terms of chapter 74 of the Session Laws of the State of Washington for 1911, being an act relating to compensation to injured workmen; and for the further reason that the Court had no jurisdiction of the subject matter of the action, the injuries to plaintiffs' decedent having occurred while he was employed at the works and plant of his employer, and all rights of action by reason of the matters set forth in the plaintiffs' complaint having been withdrawn from the jurisdiction of the Court by chapter 74 of the Session Laws of Washington for 1911 known as the Workmen's Compensation Act.

The demurrer was sustained by the Court below, and, the plaintiffs electing to stand upon their complaint without amendment, it was ordered and decreed that the action be dismissed; from which order and decree the plaintiffs sued out a writ of error from this Court.

GOVNOR TEATS, LEO TEATS and RALPH TEATS, for the Plaintiffs in Error.

C. H. WINDERS, for the Defendant in Error.

Before GILBERT, ROSS and MORROW, Circuit Judges.

MORROW, Circuit Judge, after stating the facts, delivered the opinion of the Court:

1. The question on this appeal arises out of an

act of the legislature of the State of Washington, approved March 14, 1911, known as and designated the "Workmen's Compensation Act" (chapter 74, Session Laws of the State of Washington, p. 345), relating to the compensation of workmen in extra-hazardous employments in that State.

The constitutionality of the act is not attacked by either party, and the fact that the death of the decedent was due to the wrongful act and negligence of the railway company is not denied by that company. But the position taken by the plaintiffs in error (the plaintiffs in the court below), and controverted by the defendant in error, the Northern Pacific Railway Company, is, that the Workmen's Compensation Act of the State of Washington does not and never was intended to deny to or take from the heirs or personal representatives of a deceased person their right of action for damages against the person or corporation whose wrongful act caused the death of such deceased person. The contention of the plaintiffs in error is: That the death of Benjamin Meese having been caused by the wrongful act and negligence of the Northern Pacific Railway Company, his heirs, the plaintiffs in error herein, are not barred by the provisions of the Workmen's Compensation Act from maintaining their statutory right of action against the railway company, by reason of the fact that at the time the decedent was killed he was in the employ of the Seattle Brewing Company, and acting in the discharge of his duties as an employee of that company.

The intent of the legislature of the State of Washington with respect to the scope and purview of the

compensation act must be ascertained by a construction of the act as a whole, keeping well in view the evils which, as declared by the act itself, it was intended to remedy.

The primary title of the act is as follows:

"Relating to compensation of injured workmen."

The secondary title is as follows:

"An act relating to the compensation of injured workmen in our industries, and the compensation to their dependents where such injuries result in death, creating an industrial insurance department, making an appropriation for its administration, providing for the creation and disbursement of funds for the compensation and care of workmen injured in hazardous employment, providing penalties for the nonobservance of regulations for the prevention of such injuries and for violation of its provisions, asserting and exercising the police power in such cases, and, except in certain specified cases, abolishing the doctrine of negligence as a ground for recovery of damages against employers, and depriving the courts of jurisdiction of such controversies, and repealing sections 6594, 6595 and 6596 of Remington and Ballinger's Annotated Codes and Statutes of Washington, relating to employees in factories, mills or workshops where machinery is used, actions for the recovery of damages and prescribing a punishment for the violation thereof."

The act contains its own declaration of legislative policy in the following specific terms:

> "Section 1: The common-law system governing the remedy of workmen against employers for injuries received in hazardous work is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage-worker. The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extrahazardous work, and their families and dependents, is hereby provided regardless of questions of fault, and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of actions for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this act provided."

Section 2 contains an enumeration of the extra-

hazardous occupations or works to which the act is intended to apply.

Section 3 contains particular definitions of the terms employed in the act.

Sections 4 to 19, inclusive, set forth the schedules of contribution and compensation of the act; and provide for the giving of notice under the act, and the methods of enforcement of the act.

Section 20 provides that any employer, workman, beneficiary or person feeling aggrieved at any decision of the department created by the act, affecting his interests under the act, may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the Superior Court of the county of his residence.

Sections 21 to 26, inclusive, create an Industrial Insurance Department, and impose the administration of said act upon that department.

By sections 27 and 28 it is provided, that if any employer shall be adjudged to be outside the lawful scope of the act, the act shall not apply to him or his workmen, and that if the provisions of the act relative to compensation for injuries to or death of workmen become invalid because of any adjudication, or be repealed, such repeal or the rendition of the final adjudication of invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death.

Section 29 appropriates the sum of $1,500,000.00, or so much thereof as shall be necessary, for the purposes of the act.

In section 30 it is provided that sections 8, 9 and 10

of the act approved March 6, 1905, entitled, "An act providing for the protection and health of employees in factories, mills or workshops, where machinery is used, and providing for suits to recover damages sustained by the violation thereof, and prescribing a punishment for the violation thereof" (sections 6594, 6595 and 6596 of Remington and Ballinger's Annotated Codes and Statutes of Washington, referred to in the title of the act), "and repealing an act entitled, 'An act providing for the protection of employees in factories, mills or workshops, where machinery is used, and providing for the punishment for the violation thereof, approved March 6, 1903,' and repealing all other acts and parts of acts in conflict therewith," shall be repealed, except as to any cause of action which shall have accrued thereunder prior to October 1, 1911.

Section 31 relates to the distribution of the funds in case of a repeal of the act.

Section 32 provides that the act shall not affect any action pending or cause of action existing on the 30th day of September, 1911.

With respect to the title of the act it is to be observed that it relates to the compensation of injured workmen in industries in the State of Washington, and the compensation to their dependents where such injuries result in death; but it does not purport to relate to the statutory right of action for damages given to heirs or personal representatives of a deceased person, when the death of such person is caused by the wrongful act or neglect of another. Again, the title recites that the act contains provisions

abolishing the doctrine of negligence as a ground of recovery of damages against employers, but it does not recite that the act contains provisions abolishing the statutory right of action in favor of the heirs and personal representatives of a deceased person, where the death of such person is caused by the wrongful act or neglect of another, not an employer; and the act does not in fact abolish such right of action in express terms. The title recites that the act abolishes certain sections of Remington and Ballinger's Annotated Codes and Statutes of Washington; but it does not recite that the act repeals Sections 183 and 194 of that Compilation of Codes and Statutes, under which this action was brought, and the act does not in fact in express terms repeal either of those sections of the law. These two sections, so far as they relate to this case, provide as follows:

> "Section 183: * * * When the death of a person is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death."
>
> "Section 194: No action for a personal injury to any person occasioning his death shall abate, nor shall such right of action determine, by reason of such death, if he have a wife or child living; * * * but such action may be prosecuted or commenced and prosecuted in favor of such wife or in favor of the wife and children * * *."

With respect to the declaration of policy contained in the first section of the act, it is to be noticed that it is specifically directed against "the common-law

system governing the remedy of workmen against employers for injuries in hazardous work." The present action is not one arising under the common-law system, and it is not against the employer of the decedent. The plaintiffs in error, as the wife and children of the decedent, had no right of action against the defendant at common law, whether the defendant was an employer or a third person not an employer. Their right of action is purely statutory, and is based upon Sections 183 and 194 of the above mentioned Codes and Statutes of Washington.

The question to be determined is this: Did the compensation act repeal these sections of the prior statute law? It did not by any express provisions of the act. Did it do it by implication?

The contention of the defendant in error is that these sections have been repealed, so far as plaintiffs' right of action against the defendant in error is concerned, and that the plaintiffs must recover, if at all, under the compensation act. This contention is based, first, upon the declaration contained in the first section of the compensation act concerning the exercise of the police power of the state. The declaration is "that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen injured in extrahazardous work, and their families and dependents, is hereby provided, regardless of questions of fault, and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries, and all jurisdiction

of the courts of the State over such causes are hereby abolished, except as in this act provided." The scope of this provision of the act is clearly limited primarily by the word "premises." All phases of the *"premises"* are withdrawn from private controversy. What are the *"premises"?* The *"premises"* are the matters stated in the context, namely: "the *common-law* system governing the remedy of *workmen against employers* for injuries received in hazardous work." This withdrawal does not include the general liability for a personal tort, nor does it include specifically a right of action under the State statute for injuries resulting in death caused by the wrongful act or neglect of another not an employer. The maxim *noscitur a sociis* applies here and determines the proper interpretation of the language. (Kelley vs. City of Madison, 43 Wis. 638, 28 Am. Rep. 576; McGaffin vs. City of Cohoes, 74 N. Y. 387, 30 Am. Rep. 307.)

The defendant claims further that its contention is supported by the proviso found in section 3 of the act, relating to the definition of words used in the act, "that if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section"; but this proviso is limited in express terms to "an injury to a workman occurring away from the plant

of his employer." If the injury to a workman occurs at the plant of his employer the proviso does not apply. In the present case the injury did not occur to the workman away from the plant of his employer. It occurred while he was in the employ of his employer and at the plant of his employer. The fact that the injury was due to the negligence and wrong of another not in the same employ is not sufficient under this section to bring the case within the provisions of the compensation act; but it is not necessary for us to decide that question. The question here is, have the plaintiffs in error a remedy under the prior statute? They have if that statute has not been repealed by the compensation act. It is not claimed that it has been repealed by that act in express terms. Can it be said that it has been repealed by implication? It is plain that it has not, when we consider that by the compensation act it is provided that if a workman is injured away from the plant of his employer by the negligence or wrong of another not in the same employ, and the injury results in the death of the workman, his widow, children or dependents may elect whether to take under the compensation act, or seek a remedy against such other. What that remedy against the other is, is clearly indicated by the remainder of the section pointing to a right of action under the prior statute. The remainder of the section is as follows:

> " * * * If he take under this act, the cause of action against such other shall be assigned to the State for the benefit of the accident fund; if the other choice be made, the accident fund shall

contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case. Any such cause of action assigned to the State may be prosecuted or compromised by the department, in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department."

A cause of action "against such other" which "shall be assigned to the State for the benefit of the accident fund" must be based upon the prior statute. If based upon the prior statute that statute was not repealed, but continued in force.

It is further contended by the defendant in error, that the first clause of section 5 of the compensation act provides a sure and certain remedy to workmen in case of injury, or their dependents in case of death, regardless of the right of action against any person whomsoever, and takes away such right of action. The clause is as follows:

"Each workman who shall be injured whether upon the premises or at the plant, or, he being in the course of his employment, away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and except as in this act otherwise provided, such pay-

ment shall be in lieu of any and all rights of action whatsoever against any person whomsoever."

The last words of this clause, taken alone, might be held to be sufficiently broad to justify the plaintiffs in error in claiming out of the accident fund the compensation provided in the act, and if such claim were made and allowed it would undoubtedly "be in lieu of any and all rights of action whatsoever, against any person whomsoever." But further than this we do not think the clause can be extended. The clause does not abolish or take away the right of action. It merely provides that an award under the act "shall be in lieu of any and all rights of action whatsoever against any person whomsoever."

The conclusion we have reached is, that the repeal of sections 183 and 194 of Remington and Ballinger's Compilation of the Codes and Statutes of Washington is not within the title of the compensation act; that the repeal of these sections is not within the declared policy of the compensation act as applied to the facts charged in the complaint in this case; that these sections have not been repealed by the compensation act either expressly or by implication; but, on the contrary, the implication to be drawn from the provisions of the statute is that these sections have not been repealed. These conclusions are abundantly supported by the general rules governing the construction of statutes.

2. It is a fundamental rule in the construction of a statute that its purview can be no broader than its title, or, as stated by Sutherland, in his work on Stat-

utory Construction, the title of the act must agree with the act itself, by expressing its subject; the title will fix bounds to the purview, for the act cannot exceed the title subject nor be contrary to it.

> "An act will not be so construed as to extend its operation beyond the purpose expressed in the title. It is not enough that the act embraces but a single subject or object, and that all its parts are germane; the title must express that subject, and comprehensively enough to include all the provisions in the body of the act. The unity and compass of the subject must, therefore, always be considered with reference to both title and purview. The unity must be sought, too, in the ultimate end which the act proposes to accomplish, rather than in the details leading to that end. * * * The title cannot be enlarged by construction when too narrow to cover all the provisions in the enacting part, nor can the purview be contracted by construction to fit the title." (Lewis' Sutherland Statutory Construction, sec. 120.)
>
> "The title of an act defines its scope, it can contain no valid provision beyond the range of the subject there stated." (Ibid., sec. 145.)

In the case of Diana Shooting Club vs. Lamereux, 89 N. W. 880, the Supreme Court of Wisconsin, applying the above rule to the case then under consideration, said:

> "When one reading a bill, with the full scope of the title thereto in mind, comes upon provi-

sions which he could not reasonably have anticipated because of their being in no way suggested by the title in any reasonable view of it, they are not constitutionally covered thereby. But in applying that rule, this other rule, which has been universally adopted, must be kept in mind: The statement of a subject includes, by reasonable inference, all those things which will or may facilitate the accomplishment thereof."

We are not asked in the present case to give effect to some clause of the act not embraced in the title (for, as we have observed, the act contains no provisions respecting injuries received by an employee in the course of his employment and at the plant of his employer, occasioned by the wrongful act and negligence of another not in the same employ and not connected in any way with the employee or with the employer); but we are asked to read into the statute under consideration, by construction, a meaning and an extent not covered by or included within the title.

We are of opinion that there is nothing in the title of the act which by direct words, or by any fair and reasonable intendment or inference, can be construed to include within the scope of the act, and, therefore, to deny to the plaintiffs in error in this case, a right of action of the nature of that asserted by them, or which can be construed as depriving the courts of jurisdiction of a controversy in the nature of the one now before this Court.

3. It will be noted, further, that there are expressly designated in the title of the act under consideration, certain sections of Remington and Ballin-

ger's Annotated Codes and Statutes of the State of Washington, to wit: Sections 6594, 6595 and 6596 thereof, which are by said act expressly repealed. But the very obvious purpose of the act (if the interpretation insisted upon by the defendant in error be the correct one), would be to repeal, in addition to the sections expressly enumerated, sections 183 and 194, providing for a right of action and the survival of a right of action in favor of the heirs or personal representatives of a decedent. But the express repeal of certain acts implies an intent not to repeal other sections. As said by the Supreme Court of New York in the case of Bowen vs. Lease, 5 Hill, 226:

> "The invariable rule of construction in respect to the repealing of statutes by implication is, that the earliest act remains in force, unless the two are manifestly inconsistent with and repugnant to each other; or unless in the latest act some express notice is taken of the former, plainly indicating an intention to abrogate it. As laws are presumed to be passed with deliberation, and with full knowledge of all existing ones on the same subject, it is but reasonable to conclude that the legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is irreconcilable."

Furthermore, if it was the intent of the legislature to repeal the former act, that intent should have been clearly expressed.

"There can be no intent of a statute not expressed in its words. While the object of all construction, and the purpose of all rules of interpretation is to ascertain the legislative intent, and while, in construing a particular part of a statute, the whole act may be regarded, and all other acts bearing upon the subject, and all extraneous circumstances which the legislature may be supposed to have had in mind, may be properly taken into consideration, yet the intent which is finally arrived at must be an intent consistent with, and fairly expressed by, the words of the statute themselves. * * * The intent to be ascertained and enforced is the intent expressed in the words of the statute, read in the light of the constitution and the fundamental maxims of the common law, and not an intent based upon conjecture or derived from external considerations." (Sutherland, Statutory Construction, sec. 388.)

In section 499 of the work of the same learned author, it is said:

"It is presumed that the legislature does not intend to make any change in the existing law beyond what is expressly declared."

4. The opinion of the Supreme Court of the State of Washington, dated November 28th, 1913, in the case of Peet vs. Mills (Advance Sheets, Washington Decisions, page 315), has been called to our attention by the defendant in error, in support of the position taken by it in the case at bar. We are unable to agree with counsel that the Supreme Court of the State of

Washington in that case reached a conclusion different from that reached by us in the present case. In the Washington case the plaintiff, Peet, while in the employ of the Seattle, Renton and Southern Railway Company, as a motorman, was injured in a collision between two of the railway company's trains. The defendant, Mills, was then the president of the railway company, and the plaintiff in his suit sought to hold him personally responsible for the injuries because of the allegations that when Mills assumed control and management of the railway company, it was equipped with a block signal system for use in foggy weather, which the defendant failed to operate; and that when complaint was made by the train operators of the great danger of operating the trains without the aid of the block signals, a promise was made by the defendant, Mills, to have the block signals working during foggy weather, which promise the defendant failed to keep, and as a consequence of his negligence in so failing, the plaintiff was injured. The trial Court sustained a demurrer to the complaint, and the plaintiff electing to stand upon his complaint, the action was dismissed and an appeal taken to the Supreme Court. The decision of the lower court was affirmed.

In whatever light the Supreme Court of the State of Washington may have viewed the case, no portion of the language used by it in that case can be claimed to cover the facts of the case which we now have under consideration. In the Washington case the injury was alleged to have been caused by the negligence of the defendant who was the president of the

railway, that is, in the same employ with the plaintiff. In the case now at bar the death of the decedent is alleged to have been caused by the negligence of the Northern Pacific Railway Company, a party not in the same employ with the decedent, and in no manner connected with said employment. The Washington case, viewed from this standpoint, comes within the express words of the statute; the present case does not. Here, we have an entirely different state of facts, calling for the application of entirely different principles of law; and, as we view it, the conclusions we have reached are in no sense conflicting or inconsistent with the opinion in the Washington case.

The decision of the lower Court is reversed, with directions to overrule the demurrer.

[Endorsed]: Opinion. Filed Feb. 16, 1914. [Signed] F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2287.

MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED MEESE, a Minor, CATHERINE MEESE, a Minor, LIZZIE MEESE, a Minor, WILLIE MEESE, a Minor, BENNIE MEESE, a Minor, By Their Guardian ad Litem, MARY A. MEESE,

Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendant in Error.

Judgment, U. S. Circuit Court of Appeals.

In error to the District Court of the United States for the Western District of Washington, Northern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Northern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is reversed, with costs in favor of the plaintiffs in error and against the defendant in error, and with directions to the said District Court to overrule the demurrer.

It is further ordered and adjudged by this Court, that the plaintiffs in error recover against the defendant in error for their costs herein expended, and have execution therefor.

[Endorsed]: Judgment. Filed and entered February 16, 1914. [Signed] F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

No. 2287.

MARY A. MEESE et al.,

Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendant in Error.

Motion for Order Staying Mandate.

Comes now the defendant in error, Northern Pacific Railway Company, and moves this Court for an order staying the mandate from issuing to the United States District Court for the Western District of Washington, Northern Division, pending the action of the Supreme Court of the United States upon the application of said defendant in error for a writ of *certiorari* to review the opinion and order entered thereon by this Court in the above-entitled cause.

This motion is based upon the grounds that the defendant in error is now filing in the Supreme Court of the United States its application, in form as required by statute and the rules of said court, for a writ of *certiorari* to review the decision and judgment of this Court entered herein on the 16th day of February, 1914; that the decision of this Court involves the construction of the Workmen's Compensation Act of the State of Washington, and the defendant in error believes and contends that the questions involved are of such importance to the bar of the State of Washington and to its citizens as to require in the furtherance of justice and uniformity of decision the issuance of such writ; and in the opinion of its attorneys the construction as placed on such act by this Court is contrary to the intent of the legislature of said State and contrary to the construction placed thereon by its highest court of record.

That the time necessarily involved in obtaining a decision of the Supreme Court of the United States upon its application, by reason of the distance from

San Francisco to the place of trial and the residence of the attorneys for the defendant in error, is such as to make it impossible for the defendant in error to obtain a ruling upon its application within the time prescribed by Rule 32 of this Court for the issuance of mandate upon the judgment of this Court.

This application is based on the grounds above enumerated, and upon the entire record herein and the affidavit attached hereto.

C. H. WINDERS,
Attorney for Defendant in Error, Northern Pacific Railway Company.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 2287.

MARY A. MEESE et al.,
Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,
Defendant in Error.

Affidavit.

United States of America,
State of Washington,
County of King,—ss.

C. H. Winders, being first duly sworn, deposes and says:

That he is attorney of record for the defendant in error; that on the 16th day of February, 1914, the

above-entitled court made and entered its opinion and order reversing the decision and judgment entered in this cause by the United States District Court for the Western District of Washington Northern Division; that by its opinion this Court construed what is known as the Workmen's Compensation Act of the State of Washington, placing thereon a construction different from that announced by the Honorable District Judge before whom this case was tried; that the defendant in error, believing that the Court was in error in adopting the construction as set forth in its opinion, and further believing that the construction of the statute in question is one of public importance, has decided to apply to the Supreme Court of the United States for a writ of *certiorari*, asking such court to review the opinion and decision of this Court, and for such purpose affiant, on behalf of said defendant in error, has obtained, or is now obtaining, from the clerk of this Court a certified copy of the entire record in this case, and is preparing a petition in conformity to the rules of the Supreme Court of the United States, and will, as soon as such certified copy of the record herein has been received, file said petition in the Supreme Court of the United States, asking such court to issue a writ of *certiorari* to the above-entitled court for the purpose of reviewing, as aforesaid, its judgment and decision; that affiant believes that the importance of the questions involved in the opinion of this Court, growing out of the construction of the Compensation Act of the State of Washington, is such as to make it to the interest of the bar of the State

of Washington as a whole to have the questions involved passed upon by the Supreme Court of the United States; and affiant further states that the construction given by this Court to the statute referred to is not the construction which has been given by some of the Superior Courts of the State of Washington, and, in affiant's opinion, is contrary to the interpretation placed upon said statute by the Supreme Court of the State of Washington; that by reason of the location of the attorneys for the defendant in error it will be impossible to file a petition for a writ of *certiorari* in the Supreme Court of the United States and have a ruling thereon prior to the time provided for by Rule 32 of this Court for the issuance of mandate, but that due diligence is being and will be used in the filing of said petition and the obtaining of a ruling of the Supreme Court of the United States thereon.

C. H. WINDERS.

Subscribed and sworn to before me this 13th day of March, 1914.

[Seal] F. C. REAGAN,
Notary Public in and for the State of Washington,
Residing at Seattle.

United States of America,
State of Washington,
County of King,—ss.

C. H. Winders, being first duly sworn, deposes and says:

That he is attorney for the defendant in error, and as such has prepared the foregoing motion for a stay

of mandate, as stated in the preceding affidavit; that a petition for a writ of *certiorari* is now being prepared and will be filed in the Supreme Court of the United States about the time of the presentation of said motion; that affiant and other of the attorneys for the defendant in error, and its general counsel, have fully considered the judgment of this Court, and in good faith have arrived at the opinion that a writ of *certiorari* should be applied for, and that this application, in the opinion of affiant, is meritorious and is not in any way interposed for the purpose of delay.

C. H. WINDERS.

Subscribed and sworn to before me this 13th day of March, 1914.

[Seal] F. C. REAGAN,
Notary Public in and for the State of Washington,
Residing at Seattle.

Due service of the inclosed motion admitted and a true copy received this 13th day of March, 1914.

GOVNOR TEATS,
LEO TEATS,
RALPH TEATS,
TEATS, TEATS and TEATS,
Attorneys for Plaintiffs in Error.

[Endorsed]: Original. No. 2287. In the United States Circuit Court of Appeals for the Ninth Circuit. Mary A. Meese et al., Plaintiffs in Error, vs. Northern Pacific Railway Company, a Corporation, Defendant in Error. Motion for Order Staying Mandate. Affidavit. Filed Mar. 17, 1914. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 2287.

MARY A. MEESE et al.,
Plaintiffs in Error,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,
Defendant in Error.

Notice [of Motion for Order Staying Mandate].

To the Above-named Plaintiffs in Error and to Their Attorneys, Messrs. Govnor Teats, Leo Teats, and Ralph Teats:

You and each of you will take notice that the defendant in error will present its motion, this day served upon you, for an order of the above-entitled court staying the issuance of mandate in this case, before the above-entitled court, in its courtroom in the city of San Francisco, State of California, on Wednesday, the 18th day of March, 1914, at the hour of 10 o'clock A. M., and you and each of you are hereby notified to be present at the time and place aforesaid and protect your interests as the same may appear.

Dated March 13th, 1914.

C. H. WINDERS,
Attorney for Defendant in Error, Northern Pacific Railway Company.

Copy received Mar. 13, 1914.

GOVNOR TEATS,
LEO TEATS,
RALPH TEATS,
Attys. for Plff. in Error.

[Endorsed]: Original. No. 2287. In the United States Circuit Court of Appeals for the Ninth Circuit. Mary A. Meese et al., Plaintiffs in Error, vs. Northern Pacific Railway Company, a Corporation, Defendant in Error. Notice. Filed Mar. 17, 1914. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 2287.

MARY A. MEESE et al.,

Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendant in Error.

Order Staying Mandate.

The motion of the defendant in error, Northern Pacific Railway Company, for an order staying mandate upon the judgment of this Court heretofore entered on the 16th day of February, 1914, coming on for hearing this day in chambers, and it appearing that the time for the issuance of mandate has not elapsed, and it further appearing that the defendant in error is about to file its petition in the Supreme Court of the United States for a writ of *certiorari* to review the decision and judgment of this Court entered as aforesaid, and has ordered from the Clerk of this court for such purpose a certified copy of the entire record of this cause, as required by the rules

of the Supreme Court of the United States, and it appearing that it is proper, pending a decision of the Supreme Court of the United States upon the application of the defendant in error for a writ of *certiorari,* that the mandate upon the judgment of this Court to the United States District Court for the Western District of Washington, Northern Division, be stayed, and that the questions involved in the judgment of this Court are of such importance as to justify the filing of such application, and all of the premises being understood;

It is now ordered that the issuance of mandate upon the judgment of this Court be and the same is hereby stayed, pending a decision of the Supreme Court of the United States upon the application of the defendant in error for a writ of *certiorari* to review the decision and judgment of this Court entered herein on the 16th day of February, 1914.

Dated this 17th day of March, 1914.

WM. M. MORROW,
Judge.

O.K. As to form.
GOVNOR TEATS.
LEO TEATS.
RALPH TEATS.

Due service of the inclosed order admitted, and a true copy received this 13th day of March, 1914.

GOVNOR TEATS,
LEO TEATS,
RALPH TEATS,
Attorneys for Plaintiffs in Error.

[Endorsed]: Original. No. 2287. In the United States Circuit Court of Appeals for the Ninth Circuit. Mary A. Meese et al., Plaintiffs in Error, vs. Northern Pacific Railway Company, a Corporation, Defendant in Error. Order Staying Mandate. Filed Mar. 17, 1914. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2287.

MARY A. MEESE et al.,

Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendant in Error.

Certificate of Clerk U. S. Circuit Court of Appeals to Record Certified Under Section 3 of Rule 37 of the Rules of the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing sixty-seven (67) pages, numbered from and including one (1) to and including sixty-seven (67), to be a true copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, certified under section 3 of Rule 37 of the Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the Seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this twentieth day of March, A. D. 1914.

[Seal] F. D. MONCKTON,

Clerk.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Mary A. Meese, May Meese, Edith Meese, Anna Meese, and Alfred Meese et al., minors, by their guardian ad litem, Mary A. Meese, are plaintiffs in error, and Northern Pacific Railway Company is defendant in error, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the District Court of the United States for the Western District of Washington, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-ninth day of April, in the year of our Lord one thousand nine hundred and fourteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 24,176. Supreme Court of the United States, No. 1025, October Term, 1913. Northern Pacific Railway Company vs. Mary A. Meese et al. Writ of Certiorari. Docketed. No. 2287. United States Circuit Court of Appeals for the Ninth Circuit. Original Writ of Certiorari from the Supreme Court of the United States. Filed May 7, 1914. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

Supreme Court of the United States, October Term, 1913.

No. 1025.

NORTHERN PACIFIC RAILWAY COMPANY, Petitioner,
vs.
MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED Meese, a Minor; Catherine Meese, a Minor; Lizzie Meese, a Minor; Willie Meese, a Minor; Bennie Meese, a Minor, by Their Guardian ad Litem, Mary A. Meese.

Stipulation.

It is agreed that the certified record from the Circuit Court of Appeals which was filed with the petition for certiorari and which is now on file with the Clerk of this Court stand as the record here, and

that the Clerk of the Circuit Court of Appeals in making return to the writ of certiorari may return this stipulation instead of said record.

(Signed) CHARLES W. BUNN,
Attorney for Petitioner.

(Signed) GOVNOR TEATS, LEO TEATS & RALPH TEATS,
Attorneys for Mary A. Meese, May Meese, Edith Meese, Anna Meese, Alfred Meese, a Minor; Catherine Meese, a Minor; Lizzie Meese, a Minor; Willie Meese, a Minor; Bennie Meese, a Minor, by their Guardian ad Litem, Mary A. Meese.

[Endorsed:] Stipulation as to return to writ of certiorari. Filed May 7, 1914. (Signed) F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2287.

MARY A. MEESE et al., Plaintiffs in Error,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Defendant in Error.

Certificate of Clerk U. S. Circuit Court of Appeals to Stipulation as to Return to Writ of Certiorari from Supreme Court U. S.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the next preceding page, to be a full, true, and correct copy of a "Stipulation as to Return to Writ of Certiorari", filed in the above-entitled cause on the 7th day of May, A. D. 1914, as the original thereof remains on file and of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 7th day of May, A. D. 1914.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2287.

MARY A. MEESE et al., Plaintiffs in Error,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Defendant in Error.

Return to Writ of Certiorari.

By direction of the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, I, Frank D. Monckton, as Clerk of said Court, in obedience to the annexed writ of certiorari issued out of the Honorable the Supreme Court of the United States and addressed to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, commanding them to send, without delay, to the said Supreme Court the record and proceedings in the above-entitled cause, do attach to the said Writ a certified copy of a "Stipulation As to Return to Writ of Certiorari", the original of which stipulation was filed in my office on the 7th day of May, A. D. 1914 and, pursuant thereto, do hereby send the same as the Return to the said Writ of Certiorari.

In testimony Whereof, I have hereunto set my hand and affixed the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 7th day of May, A. D. 1914.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed:] 1025/24,176.

[Endorsed:] File No. 24,176. Supreme Court U. S. October Term, 1913. Term No. 1025. Northern Pacific Railway Company, Petitioner, vs. Mary A. Meese et al. Writ of certiorari and return. Filed May 18, 1914.

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No. 1025.

Supreme Court of the United States

OCTOBER TERM, 1913.

NORTHERN PACIFIC RAILWAY COMPANY,
Petitioner,

vs.

MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED MEESE, A MINOR, CATHERINE MEESE, A MINOR, LIZZIE MEESE, A MINOR, WILLIE MEESE, A MINOR, BENNIE MEESE, A MINOR, BY THEIR GUARDIAN AD LITEM, MARY A. MEESE.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Supreme Court of the United States

OCTOBER TERM, 1913.

NORTHERN PACIFIC RAILWAY COMPANY,
Petitioner,

vs.

MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED MEESE, A MINOR, CATHERINE MEESE, A MINOR, LIZZIE MEESE, A MINOR, WILLIE MEESE, A MINOR, BENNIE MEESE, A MINOR, BY THEIR GUARDIAN AD LITEM, MARY A. MEESE.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

To the Honorable, the Supreme Court of the United States:

The petition of the Northern Pacific Railway Company respectfully shows to this Honorable Court:

The interpretation of an act of the Legislature of Washington approved March 14, 1911, is the only matter involved in this case. The act referred to is Chapter 74 of the laws of that year. It consists of a complete revision of the legislation and common law of the state applicable to compensation of injured workmen, abolishing remedies in the courts to recover damages for accidents and establishing an insurance

fund administered by the state and created by assessment against all hazardous industries. All employers in hazardous industries are required annually to pay into the fund percentages of their payrolls specified in the act and varying in different industries. The state treasurer is made custodian of the fund and the act contains a schedule of awards for death and for each kind of personal injury.

This action was brought in the District Court of the United States by the wife and children of Benjamin Meese, deceased, citizens of the state of Washington, against the Northern Pacific Railway Company, a corporation under the laws of Wisconsin, and the jurisdiction rested wholly on diverse citizenship.

The complaint alleged that Meese, being in the employ of the Seattle Brewing & Malting Company, on the premises of that company, while engaged in loading the product of the brewery into cars furnished by the Railway Company, was killed by the employes of the Railway Company negligently shunting other cars against those in and about which Meese was working.

The action is based on the statutes of Washington giving an action for death caused by negligence. The contention of the plaintiffs is that the compensation act before referred to is confined in its scope to actions by employes against employers, has no application to an action for injury to a workman brought against any person except his employer and therefore, Meese not having been an employe of the Railway Company, that the act does not stand in the way of this action.

The defendant on the other hand contends that the workmen's compensation act abolishes all actions in the courts by workmen in the hazardous employments referred to in the act, whether against employers or against third persons. This difference of interpretation of the state law is the only question involved.

The District Judge sustained a demurrer to the complaint, holding that the plaintiff's only remedy was for the benefits created under the act and therein specified. *Meese v. Northern Pacific Ry. Co.*, 206 Fed. 222. The Circuit Court of Appeals, in an opinion filed February 16, 1914, reversed the judgment of the District Court, holding that properly interpreted the compensation act of Washington does not profess to abolish a workman's action for negligent injury against any person other than his employer.

The Supreme Court of the State of Washington, in the case of *Peet v. Mills*, 136 Pac. Rep. 685, in an opinion delivered November 28, 1913, construed the state law, as your petitioner submits, as repealing and forbidding this action. This decision of the state Supreme Court was called to the attention of the Circuit Court of Appeals; the view of the Circuit Court of Appeals with respect thereto is more fully shown in its opinion.

The petitioner submits that there is herein presented and shown a conflict between the Circuit Court of Appeals and the highest court of the state of Washington as to the meaning of a statute of the state. And your petitioner insists that on this question the courts of the United States ought to follow and conform to the decision of the highest court of the state.

Your petitioner has herein no right of appeal to or writ of error from this honorable court, because the jurisdiction of the District Court depended entirely on diverse citizenship. Your petitioner presents herewith as a part of this petition a brief showing more fully its views upon the question involved and a transcript of the record in the Circuit Court of Appeals.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this court, directed to the United States

Circuit Court of Appeals for the Ninth Circuit, commanding said court to certify and send to this court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of said Court of Appeals in this case, which was entitled in that court "Mary A. Meese, May Meese, Edith Meese, Anna Meese, Alfred Meese, a minor, Catherine Meese, a minor, Lizzie Meese, a minor, Willie Meese, a minor, Bennie Meese, a minor, by their Guardian Ad Litem, Mary A. Meese, Plaintiffs in Error vs. Northern Pacific Railway Company, a corporation, Defendant in Error," to the end that said cause may be reviewed and determined by this court as provided by law, and that your petitioner may have such other or further relief or remedy in the premises as to this court may seem appropriate; and that the said judgment of the said Circuit Court of Appeals may be reversed by this honorable court.

CHARLES W. BUNN,
For Northern Pacific Railway Company.

No. 1025. 133

Supreme Court of the United States

OCTOBER TERM, 1913.

NORTHERN PACIFIC RAILWAY COMPANY,
Petitioner,

vs.

MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED MEESE, A MINOR, CATHERINE MEESE, A MINOR, LIZZIE MEESE, A MINOR, WILLIE MEESE, A MINOR, BENNIE MEESE, A MINOR, BY THEIR GUARDIAN AD LITEM, MARY A. MEESE.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

CHARLES W. BUNN,
For Petitioner.

Supreme Court of the United States

OCTOBER TERM, 1913.

NORTHERN PACIFIC RAILWAY COMPANY,
Petitioner,

vs.

MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED MEESE, A MINOR, CATHERINE MEESE, A MINOR, LIZZIE MEESE, A MINOR, WILLIE MEESE, A MINOR, BENNIE MEESE, A MINOR, BY THEIR GUARDIAN AD LITEM, MARY A. MEESE.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At the outset it should be noted that the question here raised is the interpretation of the workmen's compensation act. No question of the validity of the act can be involved. Not only was no such question considered below but it is quite obvious that no such question could have been or can be considered. This action is based on the state statute of Washington creating a cause of action for death. This action state legislation gave and state legislation may take away. The whole question therefore is of interpretation.

It is also clear that deceased was injured in an employment and at a place falling within the terms of the act. Section 2 enumerates factories, mills and workshops where machinery is used, and breweries. The definitions in Sec. 3 make it plain that these terms are intended to include all premises and yards used with factories or mills. An item in "Schedule of Contributions" (Sec. 4) is: "Breweries; bottling works; boiler works; foundries; machine shops not otherwise specified .020."

It being thus shown that the case must rest (as it was rested in the decision below) on interpretation of the act we come to consideration of the terms thereof.

The act is printed in Laws of Washington, 1911, p. 345, and printed also in appendix to this brief. The title and Sec. 1, which are the important provisions indicating the scope of the law, are as follows:

"RELATING TO COMPENSATION OF INJURED WORKMEN.

An act relating to the compensation of injured workmen in our industries, and the compensation to their dependents where such injuries result in death, creating an industrial insurance department, making an appropriation for its administration, providing for the creation and disbursement of funds for the compensation and care of workmen injured in hazardous employment, providing penalties for the non-observance of regulations for the prevention of such injuries and for violation of its provisions, asserting and exercising the police power in such cases, and, except in certain specified cases, abolishing the doctrine of negligence as a ground for recovery of damages against employers, and depriving the courts of

jurisdiction of such controversies, and repealing sections 6594, 6595, and 6596 of Remington and Ballinger's Annotated Codes and Statutes of Washington, relating to employes in factories, mills or workshops where machinery is used, actions for the recovery of damages and prescribing a punishment for the violation thereof.

Be it enacted by the Legislature of the State of Washington:

Section 1. *Declaration of Police Power.*

The common law system governing the remedy of workmen against employers for injuries received in hazardous work is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage-worker. The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extra hazardous work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this act provided."

Section 3 defines the term "workman" in this language:

"Workman means every person in this state, who, after September 30, 1911, is engaged in the employment of an employer carrying on or conducting any of the industries scheduled or classified in section 4, whether by way of manual labor or otherwise, and whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer: *Provided, however,* That if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children, or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section; and if he take under this act, the cause of action against such other shall be assigned to the state for the benefit of the accident fund; if the other choice is made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case."

Section 5, prescribing the schedule of compensations, is introduced by the language following:

"Each workman who shall be injured whether upon the premises or at the plant or, he being in the course of his employment away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever."

The decision of the Supreme Court of Washington

in *Peet v. Mills*, filed November 28 last, is printed in appendix to this brief and is reported, 136 Pac. Rep. 685. That was an action brought by a motorman in the employ of a railway company against the president of the company, in which it was sought to hold the president personally (although he was not plaintiff's employer) on the ground of his personal negligence. The opinion of the court opens with the statement that the contention there considered is "that the act is applicable only where recovery is sought upon the ground of the negligence of the employer."

It appears from the opinion that this contention was based on two grounds: (a) that the act, being in derogation of common law and not expressly abolishing negligence as ground of recovery, except as ground of recovery against employers, should by a strict construction be limited to employers; (b) that although the body of the act contains language sufficiently broad to include all defendants, whether employers or not, this language ought to be limited by the title, which it was alleged confines the act to employers.

The court said in respect of these contentions: that the act should be construed liberally as a remedial statute, instead of strictly; that the policy of the legislature as shown in the act is that every hazardous industry should bear the whole burden arising out of injuries to its employes; that the remedies of the act are ample, full and complete to reach every injury sustained by a workman, regardless of the cause of the injury and regardless of the negligence to which it may be attributed. The court said that the act is not limited to abolishment of negligence as a ground of action against an employer; that to say so overlooks and reads out of the act the controlling

principle that each industry itself should bear the whole burden of its injuries, making these injuries a charge against the cost of production as much as the cost of tools, machinery or material entering into production. The court said:

> "That in so doing the legislative mind was intent upon the abolishment of all causes of action that may have theretofore existed, irrespective of the persons in favor of whom or against whom such right might have existed."

Again the court said:

> "For these reasons we are of the opinion that the compensation provided by the act in case of injury to any workman in any hazardous occupation was intended to be exclusive of every other remedy, and that all causes of action theretofore existing, except as they are saved by the provisos of the act, are done away with."

Touching the argument that the title is restrictive of the broad language in the body of the act referred to by the court, the court said that the clause in the title "abolishing the doctrine of negligence as a ground of recovery of damages against employers" is only one matter of several covered by the title; that the title is plainly broad enough to indicate that the act is intended to furnish the *only compensation* to be allowed injured workmen; that the title fairly includes *any and all rights of action theretofore existing* in which such compensation might have been obtained.

Coming to examine the opinion of the Circuit Court of Appeals (printed in appendix to this brief) it will be found directly and fundamentally in controversy with the opinion of the Supreme Court of Washington in *Peet v. Mills*. The Circuit Court of Appeals re-

lies largely on the contention that the title to the act is limited to the abolition of actions against employers. This was the very contention considered and overruled by the state Supreme Court. The Circuit Court of Appeals holds that the title is narrower than the body of the act. This is directly contrary to the opinion of the state Supreme Court. The Circuit Court of Appeals holds that the act should be strictly construed because in derogation of common law and previous statutory law and this ruling is in the teeth of the decision of the state Supreme Court. The Circuit Court of Appeals explains the decision of the state court in *Peet v. Mills* by the fact that the defendant, Mills, president of the railway company, was in the employ of the same corporation which employed the plaintiff motorman. But the action against Mills was not based on the relation of employer and employe; and that plaintiff and defendant were in the employ of the same corporation had nothing to do with the case. Mills was sued for negligence exactly as the Railway Company in this case is sued: the most casual reading of the opinion of the state Supreme Court shows that its decision cannot thus be explained. That court stated the contention which it overruled to be, that the act was confined to *abolishing actions for negligence of an employer.* It treated the defendant, Mills, as a stranger and not as an employer and held that the act was not so confined. Had the court regarded Mills as an employer that would have ended all controversy.

The Circuit Court of Appeals has refused to give effect to plain language in the body of the act, holding in effect that some of the provisions thereof are ineffectual because not embraced in the title: but whether the act is in whole or in part invalid on

account of a too narrow title is a question of state law and not of federal law. No provision of the federal constitution requires state acts to have any title. In this respect also the court below is directly in conflict with the state Supreme Court.

The opinion of the Circuit Court of Appeals rests partly on the argument that the workmen's compensation act does not in terms repeal sections 183 and 194 of Remington and Ballinger's Annotated Codes of Washington. These two sections, so far as important, read as follows:

> "Section 183: * * * When the death of a person is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death."
>
> "Section 194: No action for a personal injury to any person occasioning his death shall abate, nor shall such right of action determine, by reason of such death, if he have a wife or child living; * * * but such action may be prosecuted or commenced and prosecuted in favor of such wife or in favor of the wife and children * * *."

But no doubt can be entertained that actions for death are abolished by the workmen's compensation act in all the cases where actions for other injuries are abolished. There is no difference. If the act abolishes the action Meese would have had against the Railway Company it abolishes the action by representatives for his death. The whole question comes back to that which was considered and passed on by the state Supreme Court, viz., whether the act abolishes all actions for negligence or is confined to actions against employers. So far as death is concerned, it is plainly included like other injuries under the com-

pensation act, the compensation for death being the first item in the schedule. See Sec. 5.

There are good reasons why Secs. 183 and 194 of the Code were not repealed by the compensation act. These sections creating liability for death by wrongful act remain in force (a) as to all non-hazardous employment not covered by the compensation act, and (b) in the case of a workman in a hazardous employment injured "away from the plant of his employer" by negligence of a third person. The definition of "workman" in Sec. 3 contains a proviso, that in such cases the injured workman, or his representatives in case of death, shall elect whether to take under the act or to sue the wrong-doer. Touching this language the Circuit Court of Appeals argues curiously, saying that the cause of action "against such other referred to in this language must be based upon the prior statute and therefore that the prior statute is not repealed but continued in force." Obviously continued in force in the special case stated in the proviso, viz., the case of a workman injured by negligence of a third person while absent from the plant of his employer.

The District Judge in deciding this case took what seems to us plainly the correct view of this proviso, saying:

> " 'At the plant' may include less or more than 'on the premises,' depending on the relative extent of the two; but these two expressions show an intention not to limit the application of the law to real property boundaries. The proviso, expressly preserving the right of action at law for the death of an employe, resulting from an injury 'occurring away from the plant of the employer,' clearly shows an intent to except from that provision of the act, abolishing all private controversies and all rights of civil action, what, but for such provision, would have been abolished,

> and, as the right of civil action is alone preserved when the injury occurs 'away from the plant of the employer,' then it is not preserved, but is abolished, when it occurs at the plant of the employer."

It is quite evident that this proviso is intended to state the only case in which a workman in hazardous employment retains the remedy for negligence which he had before the compensation act. The result of the view of the Circuit Court of Appeals is that a workman injured by negligence of a third person away from his employer's plant must elect and cannot both sue the third person and take benefits under the compensation law; while if he is injured within his employer's plant he may have both rights and pursue both remedies without election.

There can be no doubt that the act provides a benefit for the death of Meese and that his representatives or dependents are entitled to call on the fund in the hands of the state treasurer for the compensation prescribed in Sec. 5 (a) of the act. And if this right against the fund exists it follows necessarily that, with the single exception of election of remedies where the workman is injured away from the plant, the right to recover damages against the wrongdoer is by the act abolished. The act abolished actions in every case (with the single exception noted) where it gave benefits from the insurance fund.

Whatever might be said as an original question about the interpretation of the state law, we submit that the Supreme Court of the state has determined all questions of interpretation, which in any view can be involved in this case, and that the decision of the Circuit Court of Appeals is at every point in conflict with the interpretation placed on the act by the state court. There being no federal question in the case

and the whole question being of the interpretation of the state statute, it seems necessary only to suggest that this is a case where the courts of the United States cannot properly overrule the courts of the state.

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